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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,345	12/14/2001	Barry N. Gellman	BSC-219	7658
21323	7590	04/07/2004	EXAMINER	
TESTA, HURWITZ & THIBEAULT, LLP			HO, UYEN T	
HIGH STREET TOWER			ART UNIT	PAPER NUMBER
125 HIGH STREET				3731
BOSTON, MA 02110			DATE MAILED: 04/07/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/020,345	GELLMAN, BARRY N.
	Examiner (Jackie) Tan-Uyen T. Ho	Art Unit 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 January 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.
  - 4a) Of the above claim(s) 21-52 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.3
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Group I (claims 1-20) in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the restriction requirement is not proper because the action does not indicate how the apparatus can be used to practice another and materially different process. This is not found persuasive because the apparatus does in fact can be used to practice another process for example, it can be used with a method for detect temperature of a body vessel other than the blood vessel.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-11 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Strul (5,498,261). Strul discloses a thermal angioplasty system including an elongated catheter, a balloon, a thermally responsive indicator as claimed (figure 1-2, col. 4, lines 25 to 56)

The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over Strul's thermal angioplasty system which is capable of being used as claimed if one desires to do so.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solar (5,413,557) in view of Strul (5,498,261). In regard to claims 13-19, Solar disclose angioplasty catheter (figure 10) including all the limitation of the claims except for a presence of a thermally responsive indicator as claimed. Strul discloses a thermal angioplasty balloon including a thermally responsive indicator as claimed wherein the heat applied by the thermal angioplasty balloon promote the healing of blood vessels damaged by balloon angioplasty. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a thermal system and a thermally responsive indicator into Solar's angioplasty catheter in order to promote the healing the blood vessels damaged by balloon angioplasty or by the cutting instrument of the angioplasty catheter.

6. In regard to claim 12, although, the combination teaching of Solar in view of Strul does not disclose a fiber optic camera, it is well known in the art to provide a fiber optic camera for an angioplasty catheter in order to view a working area of the angioplasty catheter. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fiber optic camera in order to view a

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working area/space of the angioplasty catheter. Doing so would meet all the limitations as claimed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is (703) 306-3421. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*tanuyen*  
(Jackie) Tan-Uyen T. Ho  
Patent Examiner  
Art Unit 3731  
April 6, 2004